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IN THE
COMMONWEALTH COURT OF PENNSYLVANIA

Tanya J. McCloskey,	:	
Acting Consumer Advocate,	:	
Petitioner	:	
	:	
v.	:	**No. 1549 C.D. 2018**
	:	
Pennsylvania Public Utility	:	
Commission,	:	
Respondent	:	

DEFINITIVE FORM BRIEF FOR PENNSYLVANIA PUBLIC UTILITY COMMISSION

In support of the Pennsylvania Public Utility Commission Order
Entered October 25, 2018, at Docket No. R-2017-2640058

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Dated: June 21, 2019

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   Suggested Answer: Yes.

2. Whether the Public Utility Commission Properly Applied the Principles of the Statutory Construction Act in Interpreting the Language of Section 1301.1(b) of the Public Utility Code?

   Suggested Answer: Yes.

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   Suggested Answer: Yes.

COUNTER STATEMENT OF SCOPE AND STANDARD OF REVIEW

Scope of review refers to "the confines within which an appellate court must conduct its examination. In other words, it refers to the *matters* (or "what") the appellate court is permitted to examine." *Morrison v. Commonwealth of Pa. Dep't of Public Welfare*, 646 A.2d 565 (Pa. 1994), *quoting Coker v. S.M. Flickinger Company, Inc.*, 625 A.2d 1181, 1186 (Pa. 1983). The scope of review on appeal from an adjudication by the Pennsylvania Public Utility Commission is limited to "(1) determining whether a constitutional violation or error in procedure has occurred; (2) the decision is in accordance with the law: [sic] and (3) the necessary findings of fact are supported by substantial evidence." *PECO Energy Co. v. Pa. Public Utility Commission*, 791 A.2d 1155 (Pa. 2002); 2 Pa. C.S. § 704. As with all questions of law, the Court's scope of review is plenary. *Ramich v. Worker's Compensation Appeal Bd.* (*Schatz Electric*), 770 A.2d 318, 321 (Pa. 2001). Moreover, a court will only consider a question on appeal that was previously raised before the Commission. *Wheeling & Lake Erie Railway Co. v. Pa. Public Utility Commission*, 778 A.2d 785 (Pa. Cmwlth. 2001); 2 Pa. C.S. § 703(a).

Standard of review "refers to the *manner* in which (or "how") that examination is conducted or the "degree of scrutiny" that is to be applied." *Morrison v. Commonwealth of Pa. Dep't of Public Welfare*, 646 A.2d 565 (Pa. 1994). The court will not substitute its discretion for that properly exercised

by the Commission. *Rohrbaugh v. Pa. Public Utility Commission*, 727 A.2d 1080 (Pa. 1999). The Commission's expert interpretation of an aspect of utility law is entitled to great deference and will not be reversed unless clearly erroneous. *Popowsky v. Pa. Public Utility Commission*, 706 A.2d 1197 (Pa. 1997). The Commission's administrative expertise includes the interpretation of its regulations and governing statutes. *Aronson v. Pa. Public Utility Commission*, 740 A.2d 1208 (Pa. Cmwlth. 1999), *appeal denied*, 751 A.2d 193 (Pa. 2000). Judicial deference to the views of the agency when implementing a statutory scheme is necessary, especially when that scheme is complex. *Popowsky v. Pa. Public Utility Commission*, 706 A.2d 1197.

COUNTER STATEMENT OF THE CASE

Act 11 of 2012, Pub. L. 72, (Act 11) took effect on April 14, 2012 and amended, *inter alia*, Section 315(e) the Public Utility Code (Code) to provide that utilities may use a "fully projected future test year" to attempt to meet their burden of proof in general rate cases. *See* 66 Pa. C.S. § 315(e). Act 40 of 2016, Pub. L. 332 (Act 40) went into effect on August 11, 2016. Act 40 added Section 1301.1 to the Code which provides instructions for calculating income tax expenses into a public utility's rates.

On January 26, 2018, UGI Utilities, Inc. – Electric Division (UGI Electric) filed Tariff – Electric PA. P.U.C. Nos. 6 and 2S (Tariff Nos. 6 and 2S), to become effective March 27, 2018. In Tariff Nos. 6 and 2S, UGI Electric proposed changes to its base retail distribution rates designed to produce an increase in revenues of approximately $9.254 million, based upon data for the fully projected future test year (FPFTY) ending September 30, 2019. In its initial filing, however, UGI Electric noted that it intended to submit Supplemental Direct Testimony to address the impact of the recently enacted federal Tax Cuts and Jobs Act of 2017, Public Law No. 115-97, 131 Stat. 2054 (the TCJA), which became effective on January 1, 2018.

By Order entered March 1, 2018, Tariff Nos. 6 and 2S were suspended by operation of law pursuant to Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d),

for up to nine months, or until October 27, 2018, unless permitted by a Pennsylvania Public Utility Commission (Commission) Order to become effective at an earlier date. The Commission also initiated an investigation of UGI Electric's proposed general rate increase.

On February 5, 2018, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. Complaints against the proposed rate increase were filed by the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA) and other interested parties.

On March 12, 2018, UGI Electric filed the Supplemental Direct Testimony of five witnesses, as well as Revised Exhibit A – Fully Projected, Revised Exhibit A – Future, Revised Exhibit D – Cost of Service Study, and Revised Exhibit E – Proof of Revenues. This Supplemental Direct Testimony and revised exhibits reflected the effects of the TCJA on its base rate filing. Consequently, the submittal of this supplemental testimony and revised supporting information reduced UGI Electric's proposed revenue increase from $9.254 million to $8.491 million.

Two public input hearings were held on April 18, 2018, at which four UGI Electric customers testified telephonically. On April 26, 2018, I&E, the OCA and the OSBA served their Direct Testimony and associated exhibits. On May 25, 2018, UGI Electric, the OCA and the OSBA filed Rebuttal Testimony and

associated exhibits. I&E, OCA and OSBA served Surrebuttal Testimony and exhibits on June 7, 2018. On June 11, 2018, UGI Electric served Rejoinder Testimony and exhibits.

Evidentiary hearings were held on June 11, 2018, and June 12, 2018, before Administrative Law Judges (ALJs) Steven K. Haas and Andrew M. Calvelli. On June 20, 2018, UGI Electric, I&E, the OCA and the OSBA filed a Partial Stipulation Resolving Certain Contested Issues (Joint Stipulation) to resolve the following outstanding issues pertaining to the proposed general rate increase: (1) UGI Electric's capital structure, (2) its depreciation rates, (3) the electric vehicle (EV) rider, (4) the storm damage expense rider, (5) the Pennsylvania Public Utility Realty Tax (PURTA), (6) its universal service programs, and (7) miscellaneous accounting issues.

Pursuant to additional updates set forth in its Rebuttal Testimony and the Partial Stipulation in Settlement, UGI Electric again revised its proposed general rate increase to its base retail distribution to seek only an $7.705 million increase in its annual jurisdictional distribution operating revenues. This $7.705 million was the final claimed revenue requirement for UGI Electric in this proceeding and was based upon a FPFTY test year ending September 30, 2019 and was designed to provide UGI Electric with an opportunity to earn an 8.24% overall rate of return on rate base, including an 11.25% return on common equity, on a claimed rate base of

$119.242 million. (UGI Main Brief, Exh. A, Schedule A-1 attached as Appendix A). Like the two prior proposed revenue increases it had previously revised in this proceeding, this requested increase in its annual jurisdictional operating revenues was also based upon a FPFTY ending September 30, 2019.

UGI Electric also stated in its initial filing claims that the amount of the consolidated tax savings adjustment applicable to it, in the absence of Act 40, would have been $75,400 (i.e., $41,000 multiplied by the gross revenue conversion factor). R. 67a-68a.

UGI Electric, I&E, the OCA and the OSBA filed Main Briefs on July 2, 2018, and Reply Briefs on July 18, 2018. The record was closed on July 18, 2018, upon the filing of the parties' Reply Briefs. On August 24, 2018, ALJs Haas and Calvelli issued a Recommended Decision (R.D.) in the proceeding. Attached as Appendix B to Petitioners' Advanced Form Brief. In the Recommended Decision, the ALJs rejected OCA's adjustments to UGI Electric's FPFTY rate base calculation which were based the position that the average rate base methodology should be used in calculating the FPFTY rate base. R.D. at 14-22. The ALJs determined that it was proper for UGI Electric to base its FPFTY rate base (and associated depreciation expense) on the use of the year-end methodology. R.D. at 19-22. The ALJs directed UGI Electric to file tariffs or tariff supplements

containing rates designed to produce a $2,789,000 increase over its present annual operating revenues. R.D. at 136.

The ALJs also rejected the OCA's position that UGI Electric's approach to calculating the use its consolidated tax savings did not comply with Act 40. R.D. at 107-111. The ALJs, however, determined that UGI Electric was permitted to retain its Act 40 savings in the amount of $75,400 for the uses it had specified in the case. R.D. at 110-111.

Exceptions to the Recommended Decision were filed on September 13, 2018, by the following Parties: UGI Electric, I&E, OCA, and the OSBA. On September 24, 2018, UGI Electric, I&E, the OCA, and the OSBA filed Replies to the Exceptions.

The Commission entered an Opinion and Order in this proceeding on October 25, 2018. (*October 25th Order*). Attached as Appendix A to Petitioner's Advanced Form Brief. In the *October 25th Order*, the Commission, *inter alia*, determined that UGI Electric was permitted to utilize a year-end rate base methodology to calculate its FPFTY rate base. *October 25th Order* at 23-26. The Commission directed UGI Electric to a file tariff supplement that was designed to produce an annual distribution rate revenue increase of $3.201 million, or 3.6% based on a FPFTY ending September 30, 2019. *Id.* at 40. The Commission also determined that based on a plain reading Section 1301.1(b) of the Code, 66 Pa.

C.S. § 1301.1(b), the statutory provision does not require public utilities to provide specific information concerning how the consolidated tax savings differential amounts should be used. *Id.* at 150-153. The Commission stated that it found UGI Electric had presented evidence to show that it had complied with the overall requirements of Section 1301.1(b). *Id.* Accordingly, the Commission approved UGI Electric's retention of the $75,400 Act 40 savings for its stated purposes. *Id.*

The OCA seeks appellate review regarding whether the Commission's determination in the *October 25th Order* that: (1) UGI Electric is permitted to premise its FPFTY rate base and associated depreciation expense on the use of a year-end rate base methodology; and (2) the Commission's determination that UGI Electric has utilized its tax differential consistent with the language of 66 Pa. C.S. § 1301.1(b).

SUMMARY OF THE ARGUMENT

At issue in this case is whether UGI Electric may base its FPFTY rate base (and associated depreciation expense) on the use of a year-end rate base methodology, as it proposed and was ultimately adopted by the Commission, or whether an average rate base methodology, as recommended by the OCA, should be used.

The OCA's primary contention is that use of the year-end rate base methodology used by UGI Electric rather than the use of the average rate base methodology to calculate its FPFTY utility plant-in-service amount automatically results in rates that are not just and reasonable as prescribed by Section 1301 of the Code, 66 Pa. C.S. §1301. This contention is a fallacy.

This Honorable Court should deny the OCA's Petition for Review because the Commission's determination that UGI Electric is permitted to use a year-end rate base methodology during the FPFTY to establish base rates and associated depreciation expenses is consistent with the plain language of Section 315(e) of the Public Utility Code and the policy underlying Act 11. The statutory language of Section 315(e) of the Code provides for the inclusion of plant proposed to be placed into service throughout the FPFTY to be immediately included in utility's new rates. In essence, when a utility employs the use of a FPFTY in a base rate case proceeding, on Day 1 of the FPFTY the new rates include all proposed and

projected investments although the utility-in-plant has not been completed and is not "used and useful" in the provision of utility service to customers at the start of the FPFTY. Thus, the traditional interpretation of the "used and useful" requirement for inclusion in rate base calculation has been modified for utilities using the FPFTY as they are allowed to include immediately in their new rates utility plant that is proposed to be placed into service sometime throughout the FPFTY.

The Commission asserts that its determination regarding the interpretation of the plain language of the Section 315(e) of the Code, 66 Pa. C.S. § 315(e), effectuates the General Assembly's intent of the statutory provision. Moreover, the plain language of Section 315(e) of the Code does not indicate a specific or preferred methodology for the recovery in rates of proposed plant during the FPFTY. Permitting UGI Electric to utilize a year-end rate base methodology does not contravene the statutory ratemaking principle that rates be just and reasonable. Additionally, the Commission's determination that UGI Electric is permitted to base its FPFTY rate base (and associated depreciation expense) on the use of a year-end rate base methodology is supported by substantial evidence.

Furthermore, the manner in which UGI Electric has proposed to use its calculated consolidated tax savings complies with the statutory language of Section 1301.1(b) of the Public Utility Code, 66 Pa. C.S. § 1301.1(b). In applying the

principles of statutory construction, it is expressly clear that the General Assembly's intended purpose of Section 1301.1(b) of the Public Utility Code was to require that 50% of the consolidated tax savings calculation be used for reliability or infrastructure purposes, while the other 50% of the consolidated tax savings calculation be used for general corporate purposes. Section 1301.1(b) does not require, nor was it intended, for the consolidated tax savings to be used to reduce ratepayer obligations. Also, this statutory provision does not require public utilities to provide specific information concerning how the amounts within the listed subcategories are to be used. Accordingly, the Commission properly determined that UGI Electric presented substantial evidence to show that it has complied with the Section 1301.1(b) requirements.

Lastly, the Commission's statutory interpretations of Sections 315(e) and 1301.1(b) of the Code should be entitled to great deference because: (1) the Commission has expertise and experience with interpreting, administering, and enforcing the Public Utility Code; and (2) the statutory scheme involves the complex and technical issue of public utility ratemaking. Since the Commission's interpretation of these statutory provisions are not "clearly erroneous," this Honorable Court should affirm the Commission's determinations. Accordingly, this Honorable Court should affirm the Commission's *October 25th Order.*

ARGUMENT

I. The Commission's Determination That UGI Electric's Calculation Of Fully Projected Future Test Year Plant-In-Service Using A Year-End Methodology Produces Just And Reasonable Rates Is Consistent With Statutory Language And Ratemaking Principles

In this instant appeal, the Commission approved an increase to UGI Electric's annual jurisdictional distribution operating revenues in the amount of $3,201,000 that was based on a year-end calculation of plant-in-service at the end of the fully projected future test year (FPFTY) ending September 30, 2019. *See October 25th Order* at 40. The OCA asserts that this approved increase in UGI Electric's annual jurisdictional operating revenues that was based on the use of the calculation of plant-in-service at the end of the FPFTY (referred to as the year-end methodology) automatically results in unjust and unreasonable rates. However, the OCA's assertion is misplaced.

With the enactment of Act 11, the General Assembly amended Chapter 3 of the Public Utility Code (Code) to authorize a utility to use a FPFTY so that it can immediately recover in rates the costs for both utility plant placed in service at the beginning of the FPFTY and the utility plant projected to be in service sometime during the term of the FPFTY. *See* 66 Pa. C.S. §315(e). Thus, a utility that calculates a FPFTY rate base may recover in its rates all actual and projected plant-in-service.

A. Act 11 Permits A Utility To Use A FPFTY To Recover In Its Rates Immediately All Legitimate Revenues, Expenses, Assets, Liabilities, And Capital Issuances Projected To Be Incurred In The Rendition Of Its Public Utility Service

Section 315 of the Code, 66 Pa. C.S. § 315, contains the burden of proof a utility has in various proceedings before the Commission, including general rate case (GRC) proceedings under Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d). The utility has the burden of proof to show that the proposed rate increase in the GRC that will give it a reasonable opportunity to earn its authorized rate of return is just and reasonable. 66 Pa. C.S. § 315(a). In order to satisfy its burden of proof regarding its proposed base rates in the GRC, a utility would calculate and set the proposed base rates on a "test-year," which is a twelve-month period typically ending December 31st and requires taking a snapshot of the utility's revenues, expenses and capital costs during this one-year period. *Green v. Pa. Public Utility Commission*, 473 A.2d 209, 213-215 (Pa. Cmwlth. 1984).

The object of using a test year is to reflect typical conditions and revenues, expenses and capital costs are to be simultaneously reviewed for the same period of time so that a utility may prove its new rates are "just and reasonable." 66 Pa. C.S. § 315(a); *see generally City of Pittsburgh v. Pa. Public Utility Commission*, 112 A.2d 826, 832 (Pa. Super. 1955). Test year expenses may be adjusted or normalized where atypical or non-recurring. *Pa. Public Utility Commission v. Pennsylvania Power Company*, 85 Pub. Util. Rep. 4th 323, 379 (1987).

Traditionally, in Pennsylvania, a utility could only use a historic test year to calculate its proposed base rates. The term ''historic test year'' (HTY) refers to the latest prior 12-month period of audited information during which the historic balance of assets, expenses, and revenues can be reviewed to make future projections regarding a utility's proposed base rates. The goal in setting base rates is to take the data from the historical test year and make adjustments to the historical data that more closely reflect the expected costs and revenues going forward. If calculated accurately, the use of a test year allows the prudently managed utility to recover all expenses and a reasonable return—no more and no less. Therefore, the historic results are employed to predict the results likely to occur during the rating period.

For example, using the HTY in a rate proceeding to establish base rates, it is assumed that that the adjusted historical results are an effective basis upon which to make future projections. The utility files actual data for the historical test year and proposes adjustments to revenues, expenses, assets, liabilities, and capital issuances. These changes are known as "pro forma adjustments." Based upon the testimony and evidence before it, the Commission then decides which adjustments are allowed and the resulting revenue requirement, the utility files new rates that remain in effect until a new base rate case is brought by the utility.

In 1978, the General Assembly amended the Code to authorize utilities to use the twelve-month period following the historic test year. This "Future Test Year" (FTY) reflects the adjusted historic test year for known and measurable changes 12 months beyond the book figures for the base year, or the utility's final claimed supporting data and ended shortly before new rates took effect.[1]

By enacting Act 11, the General Assembly amended Chapter 3 of the Code so as to authorize utilities to use a "fully projected future test year" (FPFTY) to attempt to meet their burden of proof in general rate cases. Act 11 amended Section 315 of the Code to provide, in relevant part:

> **§ 315. Burden of proof.**
>
> (e) Use of future test year.--In discharging its burden of proof the utility may utilize a *future test year or a fully projected future test year, which shall be the 12-month period beginning with the first month that the new rates will be placed in effect after application of the full suspension period permitted under section 1308(d) (relating to voluntary changes in rates).* The commission shall promptly adopt rules and regulations regarding the information and data to be submitted when and if a future test period or a fully projected future test year is to be

[1] Starting in approximately 1989, the Commission began using a modified future test year approach under which utilities were given the option of either employing a single historic test year or a historic test year and a "future test year" (FTY) together.

> utilized.[2] Whenever a utility utilizes a future test year or a fully projected future test year in any rate proceeding and such future test year or a fully projected test year forms a substantive basis for the final rate determination of the commission, the utility shall provide, as specified by the commission in its final order, appropriate data evidencing the accuracy of the estimates contained in the future test year *or a fully projected future test year*, and the commission may after reasonable notice and hearing, in its discretion, adjust the utility's rates on the basis of such data. *Notwithstanding section 1315 (relating to limitation on consideration of certain costs for electric utilities), the commission may permit facilities which are projected to be in service during the fully projected future test year to be included in the rate base.*

66 Pa. C.S. § 315(e) (*emphasis added*).

Consequently, utilities now also have the option of using a FPFTY as the basis for determining new base rates. All the components that would be considered when determining base rates, including the revenues, expenses, rate base, working capital, and capital structure, are based on estimates and projections, not historical data. Thus, this method is based not upon the relationship between historical costs and revenues, but rather on estimates or forecasted data, which is permissible.

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[2] While the Commission established procedures and guidelines to carry out the ratemaking provisions of Act 11 in Chapters 3 and 13, it did not adopt final rules and regulations regarding the use of a FPFTY in accordance with Section 315 of the Code, 66 Pa. C.S. §315, in base rate case filings by regulated utilities. *See generally Implementation of Act 11 of 2012,* Final Implementation Order, Docket No. M-2012-2293611 (Order entered August 2, 2012) (*August 2nd Final Implementation Order*); *cf. Use of Fully Projected Future Test Year 52 Pa. Code Chapter 53*, Advance Notice of Proposed Rulemaking Order, Docket No. L-2012-2317273 (Order entered December 22, 2017 (Commission rulemaking proceeding relating to use of a FPFTY by jurisdictional energy and water/wastewater utilities in base rate cases).

The General Assembly amended Section 315(e) of the Code for the purposes of encouraging plant investment by certain utilities in order to address aging infrastructure but at the same time to mitigate and reduce the risks associated with regulatory lag to recover the costs of this new plant. *See generally* Act 11 of 2012. The Commission has long recognized regulatory lag as an important variable that the Commission should address in the ratemaking process. *See, e.g., Lower Paxton Twp. v. Pa. Public Utility Commission*, 317 A.2d 917, 921 (Pa. Cmwlth. 1974); *see also August 2nd Final Implementation Order*. Under the FPFTY approach, "the risks associated with regulatory lag will be substantially reduced because the new rates will be consistent with the test year used to establish those rates for at least the first year." *See August 2nd Final Implementation Order*. Thus, Section 315(e) of the Code now authorizes the use of a FPFTY for ratemaking purposes.

B. Act 11 Has Fundamentally Altered The Traditional Ratemaking Principle In Pennsylvania That A Public Utility Should Be Permitted Only To Include Projects In Rate Base That Have Actually Already Become "Used And Useful" For The Utility's Public Service

Pursuant to Section 315(e) of the Code, the FPFTY is defined as the 12-month period that begins with the first month that the new rates will be placed into effect, after application of the full suspension period permitted under Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d). *See* 66 Pa. C. S. § 315(e). Hence, an FPFTY allows a utility to project revenue requirements and ratemaking

components throughout the 12-month period beginning with the first month that the new rates would be placed in effect, after the expiration of the full nine-month suspension period allowed by law.

In the instant appeal, UGI Electric used the twelve months ending September 30, 2017 as the HTY, the twelve months ending September 30, 2018 as the FTY, and the twelve months ending September 30, 2019 as the FPFTY. *See* October 25th Order at 20. UGI Electric's claim for original cost utility plant-in-service of $188,423,000 was based on projected plant-in-service at the end of the FPFTY, *i.e.*, September 30, 2019. *Id.*

The OCA opposed UGI Electric's calculation of plant-in-service at the end of the FPFTY and instead proposed an "average" rate base calculation during the FPFTY. The gravamen of OCA's contention is that using the year-end rate base methodology for a FPFTY should be rejected because ratepayers are paying for utility plant that is only proposed to be placed into service and is not subject to any guarantee of being completed and placed into service before the expiration of the FPFTY. *See* OCA Commonwealth Court Brief at 33 (citing I&E St. 3 at 7-8). R. 61a-62a. However, a utility that opts to use a FPFTY or a forecasted test year as the basis to propose new base rates is permitted to receive a return on investment of its proposed investments in its new rates from the beginning of the utility's FPFTY.

Under traditional ratemaking principles, for a utility plant to be included in a utility's base rates (for recovery of costs), the plant had to be "used and useful" in the provision of utility service to customers. Utility plant-in-service comprises all the utility's intangible assets (*i.e.*, organization costs, franchise and consents cost, and land and land right costs) and tangible assets (*i.e.*, facilities and equipment). Consequently, by definition, the traditional premise of "used and useful" was that only plant currently providing or capable of providing utility service to customers was eligible to be reflected in a utility's rates.

Section 1315 of the Code codified the "used and useful" standard, and provides:

> **§ 1315. Limitation on consideration of certain costs for electric utilities.**
>
> Except for such nonrevenue producing, nonexpense reducing investment as may be reasonably shown to be necessary to improve environmental conditions at existing facilities or improve safety at existing facilities or as may be required to convert facilities to the utilization of coal, the cost of construction or expansion of a facility undertaken by a public utility producing, generating, transmitting, distributing or furnishing electricity shall not be made a part of the rate base nor otherwise included in the rates charged by the electric utility until such time as the facility is *used and useful* in service to the public. Excepted as stated in this section, no electric utility property shall be deemed *used and useful until it is presently providing actual utility service to the customers.*

66 Pa. C.S. § 1315 (*emphasis added*).

However, Section 315(e) of the Code explicitly exempts application of Section 1315 of the Code, 66 Pa. C. S. § 1315, which, for electric utilities, requires projects to be "used and useful" before being included in the rate base. 66 Pa. C.S. § 315(e). Specifically, the last sentence of 315(e) provides:

> . . . Notwithstanding section 1315 (relating to limitation on consideration of certain costs for electric utilities), the commission may permit facilities which are projected to be in service during the fully projected future test year to be included in the rate base. . . .

66 Pa. C.S. § 315(e). Thus, the strict statutory bar has been removed to including in rates projected plant-in-service. Once the new rates become effective, even projected plant-in-service may be recovered on Day 1 of the FPFTY.

With the enactment of Act 11, the General Assembly modified traditional ratemaking policy by allowing a utility, through the use of the FPFTY, to recover in its new rates the costs of projected investment to be made in the FPFTY. As indicated above, utilities were permitted to use historic test years and partially-forecasted test years. The plain language of Section 315(e) of the Code supports the Commission's determination that if a utility uses a FPFTY rate base in a GRC, it should be allowed to recover the projected costs for capital, labor, materials, and input services it plans to make when the new rate takes effect.

To hold or find otherwise would nullify the statutory intent of the General Assembly in enacting Act 11 and amending Section 315(e) of the Code to allow

the use of the FPFTY in establishing base rates in a general rate case proceeding. This is true even when the future facilities may not be in place and providing service when the new rates first take effect. Therefore, the inclusion of rate base added in a FPFTY necessarily means that customers will be paying a return on and a return of a utility's plant investment that is deemed to have been placed into service on Day 1 of the FPFTY. The General Assembly specifically amended Section 315(e) of the Code to permit utilities to use a FPFTY to recover the projected costs of plant-in-service. This, in and of itself, indicates that the use of a year-end methodology to calculate FPTY rate base is deemed to produce a just and reasonable rate.

Thus, the OCA's overall contention that only the use of an average test year methodology to calculate a utility's FPFTY rate base better aligns with the principles underlying the FPFTY and will result in just and reasonable rates because it prevents a utility from recovering the costs of utility plant-in-service before it is "used and useful" is erroneous. The plain language and policy of Act 11 negates this premise. The Commission asserts that simply using a year-end methodology to calculate a utility's FPFTY rate does not produce unjust and unreasonable rates.

The OCA's annual average methodology to calculate UGI's FPFTY rate base involved calculating the average balances of plant in service, accumulated

depreciation, and ADIT using the balances from September 30, 2018 and September 30, 2019, and averaging both. However, even the use of an average test year methodology to calculate FPFTY rate base relies on projections. *See* OCA Commonwealth Court Brief at 33. R. 59a-60a. To argue that the annual average methodology somehow produces more reasonable rates than the year-end methodology even though both rely on projections, is disingenuous. Based upon the plain language of Section 315(e) of the Code, the Commission has the discretion and authority to permit facilities that are only projected to be in service during the FPFTY to be included in the final determination of the rate base calculation.

If the OCA is adamant in its position that the year-end methodology to calculate FPFTY rate base is prohibited, it should make a request to the General Assembly to repeal Act 11 and void the application of the amendment to Chapter 3 of the Code that explicitly permits a utility to use a FPFTY that clearly allows it to recover in its rates utility plant-in-service and projected utility plant-in-service that is projected to be in place by the end of the FPFTY. In essence, this instant appeal is nothing more than a thinly-veiled attempt by the OCA to repeal the effect of Act 11 and reverse the General Assembly's decision to amend Chapter 3 of the Code allowing the use of the FPFTY.

C. The Commission Has Safeguards In Place To Ensure That Customers Do Not Pay Excess In Base Rates And To Mitigate Any Detrimental Impact To Customers Of Paying For The Costs Of Projects And Plant That Are Not In Service And Not Used Or Useful

It seems the OCA erroneously assumes that a utility will never account for any overearnings related to any eligible plant that is not placed into service during the FPFTY. Therefore, the OCA believes that the purpose of the Section 315(e) of the Code is being thwarted by the mere fact that UGI Electric bases its FPFTY rate base (and associated depreciation expense) on the use of a year-end rate base methodology. The OCA is mistaken.

Admittedly, a public utility has the burden of proof to establish the justness and reasonableness of every element of its rate increase request in all proceedings under 66 Pa. C.S. § 1308(d). The standard to be met by the public utility is set forth at 66 Pa. C.S. § 315(a):

> Reasonableness of rates. –In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceeding upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.

66 Pa. C.S. § 315(a).

This Honorable Court has established a utility's burden of proof in a rate proceeding pursuant to 66 Pa. C.S. § 315(a) as follows:

> Section 315(a) of the Public Utility Code, 66 Pa. C.S. Section 315(a), places the burden of proving the justness and reasonableness of a

> proposed rate hike squarely on the public utility. *It is well-established that the evidence adduced by a utility to meet this burden must be substantial.*

Lower Frederick Twp. Water Co. v. Pa. Public Utility Commission, 409 A.2d 505, 507 (Pa. Cmwlth. 1980) (*emphasis added*); *see also*, *Brockway Glass Co. v. Pa. Public Utility Commission*, 437 A.2d 1067 (Pa. Cmwlth. 1981). Accordingly, a utility's additions projected to be in service during the FPFTY will only be included in the rates if the utility provides an evidentiary record that supports that the additions are necessary and appropriate to provide service to customers.

The Commission requires the submission of "detailed testimony and sufficient documentation" for all revenues, expenses and rate base elements included in a fully-projected future test year. 66 Pa. C.S. § 315(e). Furthermore, Section 315(e) of the Code provides that the Commission may adjust the utility's rates based upon the FPFTY projection after the fact to determine whether the utility was accurate and authorizes the Commission to adjust rates to reflect material differences. The relevant portion of Section 315(e) provides:

> . . . Whenever a utility utilizes a . . . fully projected future test year in any rate proceeding and such . . . fully projected test year forms a substantive basis for the final rate determination of the commission, the utility shall provide, as specified by the commission in its final order, appropriate data evidencing the accuracy of the estimates contained in the . . . fully projected future test year, and the commission may after reasonable notice and hearing, in its discretion, adjust the utility's rates on the basis of such data . . . .

66 Pa. C.S. § 315(e). The Commission has determined that it is important for it to examine actual results in future rate proceedings in order to ensure that the FTY projections are producing just and reasonable rates. Although there will be no reconciliation of revenues and expenses between base rate cases, the Commission may require a utility to address the accuracy of its previous FTY projections in subsequent base rate cases. Accordingly, even if the utility does not meet its projected in-service date for any of the projects it has projected to be in service during the FPFTY, the Commission has the ability and authority to ensure that the use of a year-end base in the context of a FPFTY does not allow it to earn a return on its net plant investment in advance of when such investment is actually made.

Moreover, under Sections 501 and 506 of the Code, the Commission has the authority to request an audit when appropriate or require verification through a subsequent rate filing to test a utility's prior projections in the FPFTY. 66 Pa. C.S. §§ 501 and 506. The Commission asserts that these customer safeguard mechanisms mitigate the risk that customers would be paying rates throughout the whole rate year that include a return on a rate base larger than the actual investment in facilities being used to provide service.

D. The Commission's Determination That Another Jurisdiction's Finding On This Issue Was Not Persuasive Is Proper

The OCA cites to a decision of the Illinois Commerce Commission ("Illinois Commission") for support of its position in this instant appeal that an average rate base is more appropriate than a year-end rate base, given a future test year. *See Re North Shore Gas Company*, ICC Docket No. 12-0511/0512, 2013 WL 3762292 at 28-29 (Order entered June 18, 2013) (*North Shore Gas Company*).

The Commission, however, was not persuaded that this decision of the Illinois Commission supported the OCA's position that rates must be set based on the average rate base projected to be used and useful in the FPFTY. The Commission noted that the sections of the Illinois Administrative Code relied upon by OCA does permit the use of a year-end rate base where certain evidentiary requirements are met; however, the Illinois Commission did not find it was applicable to the particular facts before it. *See generally North Gas Company, supra*. Thus, the Commission's determination that OCA's citation to one provision of another jurisdiction's ratemaking practice without looking at other issues and aspects of that jurisdiction's overall ratemaking policy was not particularly persuasive was proper.

Moreover, as the Commission explained, the practices and policies of other jurisdictions have little, if any, relevance for Pennsylvania. *See., e.g., Petition for*

Declaratory Order Regarding Ownership of Alt. Energy Credits, Associated with Non-Utility Generating Facilities Under Contract to Pa. Elec. Co. and Metro. Edison Co., 2007 Pa. PUC LEXIS 7, *26-27 (Order entered Feb. 12, 2007); *see also, Elder v. Orluck*, 515 A.2d 517, 522 (Pa. 1986) (noting that it was not appropriate to consider another jurisdiction's statute where there was no indication that the General Assembly based Pennsylvania legislation on legislation adopted in other jurisdictions).

The Commission noted that different jurisdictions have adopted different approaches and mechanisms to various ratemaking issues, including capital structure, cost of equity, normalization, annualization and amortization, automatic adjustment clauses and post-test year adjustments. Some states use historical test periods only, other states use a variety of alternatives such as use of future test year periods or may allow utility choice, or use of a hybrid form such as partially forecasted test year or the use of fully forecasted test years. Ratemaking methodology among states is not consistent from state to state and varies based upon the language and scope of state legislation. Accordingly, the Commission's determination that it was not appropriate to select one isolated element of the ratemaking formula from another jurisdiction and apply it to Pennsylvania ratemaking policy was proper.

II. The Commission's Decision Regarding UGI Electric's Use of its Calculated Consolidated Tax Savings Differential Is Consistent With Statutory Language

The instant appeal also involves a question regarding the statutory interpretation of Section 1301.1(b) of the Public Utility Code concerning the manner in which a utility may use its calculated consolidated tax savings differential. The OCA's contention that UGI's calculated consolidated tax savings differential should be used to reduce ratepayer obligations contravenes the plain language of the Section 1301.1(b) of the Code and the intent of the General Assembly in enacting Act 40 and should be rejected by this Honorable Court.

Act 40 became effective on August 11, 2016, and amended Chapter 13 of the Code by adding Section 1301.1. *See* 66 Pa. C.S. § 1301.1. Section 1301.1 of the Code states as follows:

> **§ 1301.1. Computation of income tax expense for ratemaking purposes.**
>
> **(a) Computation.**—If an expense or investment is allowed to be included in a public utility's rates for ratemaking purposes, the related income tax deductions and credits shall also be included in the computation of current or deferred income tax expense to reduce rates. If an expense or investment is not allowed to be included in a public utility's rates, the related income tax deductions and credits, including tax losses of the public utility's parent or affiliated companies, shall not be included in the computation of income tax expense to reduce rates. The deferred income taxes used to determine the rate base of a public utility for ratemaking purposes shall be based solely on the tax deductions and credits received by the public utility and shall not include any deductions or credits generated

by the expenses or investments of a public utility's parent or any affiliated entity. The income tax expense shall be computed using the applicable statutory income tax rates.

(b) Revenue use.—If a differential accrues to a public utility resulting from applying the ratemaking methods employed by the commission prior to the effective date of subsection (a) for ratemaking purposes, the differential shall be used as follows:

(1) fifty percent to support reliability or infrastructure related to the rate base eligible capital investment as determined by the commission; and

(2) fifty percent for general corporate purposes.

(c) Application.—The following shall apply:

(1) Subsection (b) shall no longer apply after December 31, 2025.

(2) This section shall apply to all cases where the final order is entered after the effective date of this section.

66 Pa. C.S. § 1301.1(a)-(c).

The primary purpose of Act 40 was to amend the Code to require that, "income tax deductions and credits, including tax losses of the public utility's parent or affiliated companies, shall not be included in the computation of income tax expense to reduce rates." In other words, Act 40 has eliminated the so called

"consolidated tax savings adjustment" () from Pennsylvania ratemaking.[3]

Prior to Act 40, long-standing decisions of the Commonwealth Court required the Commission to adjust rates to reflect "savings" achieved from a utility's participation in its parent company's consolidated tax return. *Pa. Public Utility Commission, et al., v. PPL Gas Utilities Corporation*, Docket Nos. R-0061398 et al., 2007 Pa. PUC LEXIS 779 at *128-133 (Order entered Feb. 8, 2007) (litigating consolidated tax savings adjustment); *Petition of Metropolitan Edison Company for Approval of a Distribution System Improvement Charge*, Docket Nos. P-2015-2508942, et al., 2018 Pa. PUC LEXIS 147 (Order entered April 19, 2018)

However, the intended purpose of Section 1301.1 was to move away from Pennsylvania's past practice of requiring a consolidated tax adjustment to a public utility's tax expenses when setting rates in a base rate proceeding.

[3] Consolidated tax savings allows an affiliated group of companies (e.g., a combination of utility company, sister corporations, and the parent) to file a single tax return at the parent company level for federal taxes. These unregulated affiliates (e.g., natural gas exploration or electric generation) may generate little or no income and therefore generate no tax or even tax credits. Thus, the consolidated entity may pay little or no income taxes on an aggregate basis. However, on a "stand alone" basis, a utility affiliate that participates in the consolidated tax return may claim taxes at the full rate (50%) in the rate case, collecting for taxes that they may not pay on a consolidated basis. The consolidated tax savings adjustment was adopted by the Commission, affirmed under a 1985 Pennsylvania Supreme Court decision, and applied consistently for almost 30 years thereafter.

A. Based On The Plain And Unambiguous Language Of Section 1301.1 Of The Public Utility Code, UGI Electric Has Complied With The Statutory Provision's Requirements Regarding The Consolidated Tax Savings Differential

The Statutory Construction Act (SCA), 1 Pa. C.S. §§ 1501-1991, directs that, "when the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa. C.S. § 1921(b); *see also Snyder Bros. v. Pa. Public Utility Commission,* 198 A.3d 1056 (Pa. 2018). The Commission asserts that that the language of the Section 1301.1(b) of the Code is clear and unambiguous.

In discerning that intent, courts first look to the language of the statute itself. 1 Pa. C.S. § 1921; *Mohamed v. Com., Dep't of Transp., Bureau of Motor Vehicles*, 40 A.3d 1186, 1193 (Pa. 2012). The Commission looked to the plain language of the statutory provision in order to ascertain its unambiguous expressed intent. The plain language of Section 1301.1(b) of the Code specifies how the consolidated tax savings generated by the operation of Section 1301.1(a) must be used by the affected public utilities until December 31, 2025.

Based on a plain reading of the statute, Section 1301.1(b) of the Code requires utilities to compute a hypothetical CTA (which would apply in the absence of Act 40), and to certify that 50% of that calculated consolidated tax savings differential shall be used to support reliability or infrastructure related to the rate-base eligible capital investment as determined by the Commission, and the

other 50% of that differential shall be used for general corporate purposes. 66 Pa. C.S. § 1301.1(b). However, the plain language of this statutory provision does not require public utilities to provide detailed information to the Commission as to how the specific amounts would be used by them. It simply sets forth the categories where the utilities must use the calculated consolidated tax savings.

Pursuant to Section 1301.1(a) of the Code, UGI Electric calculated its consolidated tax savings differential, or Act 40 savings, to be in the amount of $75,400. 66 Pa. C.S. § 1301.1(a). R. 34a., 67a-68a. It should be noted that the OCA does not oppose the manner in which UGI Electric has calculated the amount of its Act 40 savings.

Based upon the plain language of Section 1301.1(b) of the Code, UGI Electric is only required to present evidence that it will use 50% of the $75,400 Act 40 savings for reliability or infrastructure purposes, and the other 50% of the Act 40 savings be used for general corporate purposes. That means UGI Electric is required to show that it is using or expending $37,700 dollars for each of these categories.

In the rate case before the Commission, UGI Electric presented testimony that its pro forma capital additions for reliability or infrastructure projects in the FTY was $10.950 million and for the FPFTY was $11.770 million, which is exceedingly greater than $37,700, or 50% of the UGI's properly calculated

$75,400 Act 40 savings amount. R. 23a-24a. Moreover, UGI Electric also presented evidence that its general corporate purpose expense would also exceed $37,700. *Id.* This reflects that the Fiscal Year 2019 (i.e., the FPFTY) operating expense budget used to render electric service was $81M. Accordingly, the Commission found that UGI Electric presented substantial evidence to show that it complied with the requirements of Section 1301.1(b) of the Code by using 50% of its consolidated tax savings amount on capital additions for reliability or infrastructure projects and the other 50% of the savings amount on general corporate purpose expenses.

Nonetheless, in its appellate brief, OCA presents this convoluted and nebulous argument surrounding the meaning of the term "use" in Section 1301.1(b) of the Code, 66 Pa. C.S. §1301.1(b). *See* OCA Commonwealth Court Brief at 46-47. As a result, the OCA asserts that the Commission's determination that UGI has complied with the requirements of Section 1301.1(b) contradicts the plain language of the statutory provision. This argument is erroneous.

First, it should be noted that the OCA does not dispute the fact nor has presented any testimony that UGI Electric will not be using more than $37,700 dollars on its capital expenditure expense and general corporate purpose expense. In fact, basic arithmetic indicates that $10.950 million for the FTY and $11.770 million for the FPFTY exceeds $37,700 by a wide margin. Section 1301.1(b) does

not require UGI Electric to list or outline in detail each specific capital expenditure project or specify all general corporate expenditures. UGI Electric presented uncontested evidence that it would expend $10.950 million for the FTY and $11.770 million for the FPFTY on capital expenses and that it would expend more than $37,700 for general corporate purposes. Thus, the Commission determined that UGI complied with the requirements of Section 1301.1(b) of the Code. 66 Pa. C.S. § 1301.1(b).

Secondly, the OCA's entire premise that the calculated tax savings differential should be "used" as an offset to rate base conflicts with the plain language of the statutory provision and the overall policy of the General Assembly in enacting Act 40. OCA's contention that Act 40 savings must be used to reduce ratepayer obligations in the specified categories— capital expenditure expense and general corporate purpose expense— because Act 40 somehow contemplates and directs rate impact mitigation for ratepayers has no footing. In fact, this contention contradicts the policy of Act 40. If the OCA seeks to change the manner in which the General Assembly intended for Act 40 savings to be utilized it should seek an amendment of Section 1301.1 of the Code from the General Assembly, not from this Honorable Court. OCA's request for relief on this issue is beyond this Court's purview, and the OCA is in the wrong forum to implement its policy change regarding the use of consolidated tax savings. The Commission's determination to

approve UGI Electric's retention of the $75,400 Act 40 savings to be used for UGI Electric's stated purposes of capital projects and general corporate expenditures, rather than to adopt OCA's proposal to use the Act 40 savings to reduce revenues was proper and consistent with the plain language of Section 1301.1(b) and the overall policy of Act 40.

B. The Omission Of *Certain* Elements That Could Be Included In The Calculation Of A Base Rate Does Not Make A Rate Unjust Or Unreasonable

The OCA's contention that a utility's rate can be declared unjust or unreasonably by simply looking in isolation at one or two of its components should be rejected. The Commission retains its discretion to decide what factors it will consider when setting a utility's rates. *See generally McCloskey v. Pa. Public Utility Commission*, 127 A.3d 860 (Pa. Cmwlth. 2015). The OCA's contention ignores the definition of "rate" set forth in Section 102 of the Code and is also contrary to the holding in *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989) *(Barasch).*

In *Barasch*, a utility contended that it was unconstitutionally unjust and unreasonable to exclude from its rates the costs associated with a canceled nuclear power plant. The United States Supreme Court analyzed how a judicial body may evaluate the justness and reasonableness of rates. The Court noted that in determining whether rates are just and reasonable, "the economic judgments

required in rate proceedings are often hopelessly complex and do not admit of a single correct result." *Barasch*, 488 U.S. at 314. The Supreme Court held:

> [W]e reaffirm these teachings of [*FPC v. Hope Natural Gas Co.*, 320 US 591, 602 (1944)]: "[I]t is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unreasonable, judicial inquiry. . . is at an end. The fact that the method employed to reach that result may contain infirmities is not then important." *Id.* at 602. This language, of course, does not dispense with all of the constitutional difficulties when a utility raises a claim that the rate which it is permitted to charge is so low as to be confiscatory: whether a particular rate is "unjust" or "unreasonable" will depend to some extent on what is a fair rate of return given the risks under a particular rate-setting system, and on the amount of capital upon which the investors are entitled to earn that return.

Id.

The US Supreme Court went on to find that the disallowance of a single element is not the appropriate standard for determining whether rates are just and reasonable. This is due, in part, to the fact that "errors to the detriment of one party may well be canceled out by countervailing errors or allowances in another part of the rate proceeding." *Id.* Finally, in rejecting that there is a single theory of valuation that produces just and reasonable rates, the Court held:

> [C]ircumstances may favor the use of one ratemaking procedure over another. The designation of a single theory of ratemaking as a constitutional requirement would unnecessarily foreclose alternatives which could benefit both consumers and investors. The Constitution within broad limits leaves the States free to decide what rate setting methodology best meets their needs in balancing the interests of the utility and the public.

Id. at 316. Thus, the Supreme Court in *Barasch* acknowledged that there are many ways to achieve rates that are just and reasonable. The Court went on to find that the disallowance of a single element is not the appropriate standard for determining whether rates are just and reasonable. Rather, the Court held, a determination regarding whether rates are just and reasonable should look at the total effect of the rates. *Id.* Accordingly, the Commission asserts that the omission of certain elements that could be included in the calculation of a base rate does not make a rate unjust or unreasonable.

III. Pennsylvania Appellate Courts Generally Give Substantial Deference To The Commission's Interpretation Of Its Enabling Statute, Especially When The Issue Is A Complex Matter Within The Commission's Expertise

It is well settled that when the courts of this Commonwealth are faced with interpreting statutory language, they afford substantial deference to the interpretation rendered by the administrative agency overseeing the implementation of such legislation. *See Winslow-Quattlebaum v. Maryland Ins. Group*, 752 A.2d 878, 881 (Pa. 2000). Because of the highly technical and complex nature of the Code and the Commission's role in implementing it, the appellate courts have granted the Commission substantial deference regarding its interpretations of the statutory provisions of the Public Utility Code.

Additionally, where a matter has been left within an administrative agency's discretion, this Court will interfere only if "there has been a manifest and flagrant abuse of discretion or a purely arbitrary execution of the agency's duties or functions." *Slawek v. State Bd. of Med. Educ. & Licensure*, 586 A.2d 362, 365 (Pa. 1991), *quoting Blumenschein v. Pittsburgh Hous. Auth.*, 109 A.2d 331, 334-35 (Pa. 1954).

Appellate courts in Pennsylvania have similarly concluded that the Commission is "vested with discretion to decide what factors it will consider in setting or evaluating a utility's rates." *See generally Popowsky v. Pa. Public Utility Commission*, 683 A.2d 958 (Pa. Cmwlth. 1996); *see e.g., Pa. Public Utility Commission v. Peoples TWP LLC*, Docket No. R-2013-2355886 (Opinion and Order entered December 19, 2013), slip op. at 27. This also highlights the reason why the US Supreme Court specifically acknowledged that the ultimate balancing of allowances and disallowances in the calculation of rate is why adjudicative bodies should not focus on *individual* components of the rate in determining whether rates are just and reasonable. *See Duquesne Light Co. v. Barasch*, 488 U.S. 299, 314 (1989) *(Barasch)*.

Similarly, the Pennsylvania Supreme Court has determined that an administrative agency's expert interpretation of a statute for which it has

enforcement responsibility will not be reversed unless clearly erroneous. *Alpha Auto Sales v. Dep't of State*, 644 A.2d 153, 155 (Pa. 1994) (*Alpha Auto Sales*). In *Alpha Auto Sales*, the Pennsylvania Supreme Court stated:

> The proper place to begin the appropriate inquiry is . . . due deference to the views of the regulatory agency directly involved in administering the statute in question . . . "an administrative agency's expert interpretation of a statute for which is has enforcement responsibility is entitled to great deference and will not be reversed unless clearly erroneous.

Id.

The Commission asserts that this Honorable Court should be hesitant to impose its own statutory interpretation on Act 40, but rather should review the Commission's interpretation to determine whether it is permissible. *See Bethenergy Mines v. Department of Environmental Protection*, 676 A.2d 711, 715 (Pa. Cmwlth. 1996) (citations omitted).

Judicial deference is even more necessary when the statutory scheme is technically complex. *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. Pa. Public Utility Commission*, 120 A.3d 1087 (Pa. Cmwlth. 2015), *appeal denied*, 136 A.3d 982 (Pa.2016). The instant appeal involves the complex issue of public utility ratemaking. Ratemaking questions require the exercise of the Commission's expertise, and reviewing courts tend to defer to the Commission's exercise of discretion in that area. *Philadelphia*

Suburban Water Co. v. Pa. Public Utility Commission, 808 A.2d 1044, 1060 (Pa. Cmwlth. 2002).

The Commission asserts that this Honorable Court should give a high level of deference to the Commission's interpretation of Sections 315(e) and Section 1301.1(b) of the Code because: (1) the statutory provisions involve a technically complex matter of setting rates for a public utility and its application requires the agency's expertise and; (2) the Commission did not abuse its discretion or act arbitrarily in adopting UGI Electric's positions. Accordingly, this Honorable Court should give substantial deference to the Commission's interpretation of Sections 315(e) and 1301.1(b) of the Code, 66 Pa. C.S. §§ 315(e) and 1301.1(b).

CONCLUSION

WHEREFORE, for the foregoing reasons, the Pennsylvania Public Utility Commission respectfully requests this Honorable Court to deny the OCA's Petition for Review and affirm the Commission's *October 25th Order*.

Respectfully submitted,

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Dated: June 21, 2019

APPENDIX A

UGI Utilities, Inc. - Electric Division
Before the Pennsylvania Public Utility Commission
Fully Projected Future Period - 12 Months Ended September 30, 2019
($ in Thousands)

Schedule A-1
Witness: S. F. Anzaldo
Page 1 of 1

Summary of Measure of Value and Revenue Increase

Line #	Description	[1] Function	[2] Reference Section	[3] Pro Forma Test Year Ended September 30, 2019 At Present Rates	[4] Increase	[5] Proposed Rates
RATE BASE						
1	Utility Plant		C-2	$ 188,423		$ 188,423
2	Accumulated Depreciation		C-3	(59,805)		(59,805)
3	Net Plant in service	L 1 + L 2		128,618	-	128,618
4	Working Capital		C-4	7,150		7,150
5	Accumulated Deferred Income Taxes		C-6	(16,572)		(16,572)
6	Customer Deposits		C-7	(1,419)		(1,419)
7	Materials & Supplies		C-8	1,465		1,465
8	TOTAL RATE BASE	Sum L 3 to L 7		$ 119,242	$ -	$ 119,242
OPERATING REVENUES AND EXPENSES						
	Operating Revenues					
9	Base Customer Charges		D-5	$ 29,605	$ 7,705	$ 37,310
10	Other Electric Revenue		D-5	58,473		58,473
11	Other Operating Revenues		D-5	1,014		1,014
12	Total Revenues	Sum L 9 to L 11		89,092	7,705	96,797
13	Operating Expenses		D	(84,055)	(540)	(84,595)
14	OIBIT	L 12 + L 13		5,037	7,165	12,202
15	Pro Forma Income Tax at Present Rates		D-33	(307)		
16	Pro Forma Income Tax on Revenue Increase		D-33		(2,070)	(2,377)
17	NET OPERATING INCOME	Sum L 14 to L 16		$ 4,730	$ 5,095	$ 9,826
18	RATE OF RETURN	L 17 / L 8		3.967%		8.240%
REVENUE INCREASE REQUIRED						
19	Rate of Return at Present Rates	L 18, Col 3		3.967%		
20	Rate of Return Required		B-7	8.240%		
21	Change in ROR	L 20 - L 19		4.273%		
22	Change in Operating Income	L 21 * L 8		$ 5,095		
23	Gross Revenue Conversion Factor		D-35	1.512278		
24	Change in Revenues	L 22 * L 23		$ 7,705		
25	Percent Increase -- Delivery Revenues	L 24 / L 9, C 3			26.03%	
26	Percent Increase -- Total Revenues	L 24 / L 12, C 3			8.65%	

CERTIFICATE OF COMPLIANCE WITH PUBLIC ACCESS POLICY

I hereby certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

CERTIFICATE OF COMPLIANCE
WITH WORD COUNT LIMITATION REQUIREMENT

This brief complies with the word count limitation requirement of Pa. Rules of Appellate Procedure 2135(d) because this brief contains 10,483 words, excluding the parts of the brief exempted by Pa. Rule of Appellate Procedure 2135(b) as shown by the word processing system used to prepare the brief.